

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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In the Matter of the Application of)
)
HARTFORD FIRE INSURANCE COMPANY,)
)
Petitioner,)
)
Civil Action No. 07cv7977
)
-against-)
)
THE EVERGREEN ORGANIZATION, INC.)
CHARLES A. CARONIA, GARY UPHOUSE,)
CHARLES CARONIA, JR., and ANDREJS)
KRUTAINIS,)
)
Respondents.)
)
)
)
----- x

**DECLARATION OF SEEMA A. MISRA ON PROCEDURAL
BACKGROUND TO HARTFORD FIRE INSURANCE COMPANY'S
PETITION FOR JUDGMENT CONFIRMING ARBITRATION AWARD**

SEEMA A. MISRA, being duly sworn, deposes and says:

1. I am a member of Stroock & Stroock & Lavan LLP, counsel for Petitioner Hartford Fire Insurance Company in this action. I respectfully submit this statement in connection with Hartford Fire Insurance Company's Petition for Judgment Confirming Arbitration Award.

2. The petition seeks confirmation in this district pursuant to 9 U.S.C. § 9 because an arbitration panel, convened in New York, New York from January 8- 14, 2007, presided over the arbitration proceeding and subsequently issued an award in favor of the Petitioner. As explained below, this Court has previously issued orders providing relief ancillary to the arbitration.

3. In 2004, Petitioner instituted a proceeding in this Court to obtain equitable relief pending arbitration. The docket No. was 04-cv-03333-LAK. A print-out of the docket is attached as Exhibit 1.

4. In an Order dated June 8, 2004, attached as Exhibit 2, the Court granted the relief requested by Petitioner.

5. Petitioner later sought additional relief by moving to compel arbitration, which the Court also granted. As the Court docket reflects, judgment was entered on September 8, 2005, and the case was accordingly closed. (Ex. 1 no. 31)

6. On August 22, 2007, Petitioner filed a petition to confirm the arbitration award under docket no. 04-cv-0333.

7. In an Order dated September 7, 2007, attached as Exhibit 3, the Honorable Judge Lewis Kaplan denied the petition to confirm the arbitration award "without prejudice to the commencement of a new proceeding to confirm the arbitration award." This Petition is made pursuant to that Order.

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SEEMA A. MISRA

Exh. 1

CLOSED, ECF

**U.S. District Court
United States District Court for the Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:04-cv-03333-LAK**

Hartford Fire Insurance Company v. The Evergreen
Organization, Inc. et al
Assigned to: Judge Lewis A. Kaplan
Cause: 28:1332 Diversity-Other Contract

Date Filed: 05/03/2004
Date Terminated: 09/08/2005
Jury Demand: None
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Petitioner

Hartford Fire Insurance Company

represented by **James E. Fitzgerald**
Stroock & Stroock & Lavan, L.L.P.
180 Maiden Lane
New York, NY 10038-4982
(212) 806-5400
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michele Lynne Jacobson
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LEAD ATTORNEY
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V.

Respondent

The Evergreen Organization, Inc.

represented by **Michael Scott Gollub**
Marshall Conway & Wright, P.C.
116 John Street
New York, NY 10038

(212)619-4444
Fax: (212)619-4444
Email: mgollub@mcwpc.com
ATTORNEY TO BE NOTICED

David Nyce Kittredge
Luboj & Thau, LLP
10 East 40th Street, 30th Floor
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212-779-9800
Fax: 212-252-0457
Email: dkittredge@lubojathau.com
ATTORNEY TO BE NOTICED

Respondent

Charles A. Caronia

represented by **Michael Scott Gollub**
(See above for address)
ATTORNEY TO BE NOTICED

David Nyce Kittredge
(See above for address)
ATTORNEY TO BE NOTICED

Respondent

Gary Uphouse

represented by **Michael Scott Gollub**
(See above for address)
ATTORNEY TO BE NOTICED

David Nyce Kittredge
(See above for address)
ATTORNEY TO BE NOTICED

Respondent

Charles Caronia, Jr.

represented by **Michael Scott Gollub**
(See above for address)
ATTORNEY TO BE NOTICED

David Nyce Kittredge
(See above for address)
ATTORNEY TO BE NOTICED

Respondent

Andrejs Krutainis

represented by **Michael Scott Gollub**
(See above for address)
ATTORNEY TO BE NOTICED

David Nyce Kittredge
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
05/03/2004	<u>1</u>	PETITION (Filing Fee \$ 150.00, Receipt Number 507158). Document filed by Hartford Fire Insurance Company.(jjm,) Additional attachment(s) added on 5/5/2004 (jjm,). (Entered: 05/04/2004)
05/03/2004		Magistrate Judge Debra C. Freeman is so designated. (jjm,) (Entered: 05/04/2004)
05/03/2004	<u>2</u>	RULE 7.1 DISCLOSURE STATEMENT. Document filed by Hartford Fire Insurance Company.(jjm,) Additional attachment(s) added on 5/5/2004 (jjm,). (Entered: 05/04/2004)
05/03/2004		Case Designated ECF. (jjm,) (Entered: 05/04/2004)
05/04/2004	<u>3</u>	ORDER TO SHOW CAUSE by Hartford Fire Insurance Company, PRELIMINARY INJUNCTION, TEMPORARY RESTRAINING ORDER Show Cause Hearing set for 5/18/2004 11:00 AM before Judge Lewis A. Kaplan. That a Security in the amount of \$10,000 be posted by Hartford within 3 business days fo the entry of this Order. (Signed by Judge Lewis A. Kaplan on 5/4/04) (pl,) (Entered: 05/04/2004)
05/04/2004	<u>4</u>	MEMORANDUM TO THE DOCKET CLERK: TRO Hearing begun and concluded on 05/04/04; Court reporter Connie Kuhl present. (djc,) (Entered: 05/05/2004)
05/06/2004	<u>5</u>	Exhibit List / <i>Exhibits and Declarations Attached To Order To Show Cause Entered On 5/4/04 (Part 1)</i> . Document filed by Hartford Fire Insurance Company.(Misra, Seema) (Entered: 05/06/2004)
05/06/2004	<u>6</u>	Exhibit List / <i>Exhibits And Declarations Attached To Order To Show Cause Entered On 5/4/04 (Part 2)</i> . Document filed by Hartford Fire Insurance Company.(Misra, Seema) (Entered: 05/06/2004)
05/06/2004	<u>7</u>	Exhibit List / <i>Exhibits And Declarations Attached To Order To Show Cause Entered On 5/4/04 (Part 3)</i> . Document filed by Hartford Fire Insurance Company.(Misra, Seema) (Entered: 05/06/2004)
05/06/2004	<u>8</u>	MEMORANDUM OF LAW re: <u>3</u> Order to Show Cause,, Preliminary Injunction,, Temporary Restraining Order, <i>Petitioner's Memorandum Of Law In Support Of Motion For A Temporary Injunction, Preliminary Injunction, And Attachment Order In Aid Of Arbitration</i> . Document filed by Hartford Fire Insurance Company. (Misra, Seema) (Entered: 05/06/2004)
05/07/2004	<u>9</u>	Undertaking BOND # CGB 8748230 for TRO in the amount of \$ 10,000.00 posted by Hartford Fire Insurance Company. (ml,) (Entered: 05/10/2004)
05/14/2004	<u>10</u>	RULE 7.1 DISCLOSURE STATEMENT. Document filed by The Evergreen Organization, Inc..(Kittredge, David) (Entered: 05/14/2004)
05/14/2004	<u>11</u>	AFFIRMATION of David N. Kittredge, Esq. in Opposition to <u>3</u> Order to

		Show Cause. Document filed by Charles Caronia Jr., Charles A. Caronia, Andrejs Krutainis, The Evergreen Organization, Inc., Gary Uphouse. (Kittredge, David) Modified on 8/13/2004 (mj,). (Entered: 05/14/2004)
05/14/2004	<u>12</u>	FILING ERROR - WRONG PDF FILE ASSOCIATED WITH DOCKET ENTRY - AFFIRMATION of Gary Uphouse in Opposition. Document filed by Charles Caronia Jr., Charles A. Caronia, Andrejs Krutainis, The Evergreen Organization, Inc., Gary Uphouse. (Kittredge, David) Modified on 8/13/2004 (mj,). (Entered: 05/14/2004)
05/14/2004	<u>13</u>	FIRST MEMORANDUM OF LAW in Opposition <u>3</u> Order to Show Cause. Document filed by Charles Caronia Jr., Charles A. Caronia, Andrejs Krutainis, The Evergreen Organization, Inc., Gary Uphouse. (Kittredge, David) Modified on 8/13/2004 (mj,). (Entered: 05/14/2004)
05/17/2004	<u>14</u>	MOTION for Attachment In Aid Of Arbitration., MOTION for Preliminary Injunction., MOTION for Temporary Restraining Order. Document filed by Hartford Fire Insurance Company. Return Date set for 5/18/2004 11:00 AM. Return Date set for 5/18/2004 11:00 AM. Return Date set for 5/18/2004 11:00 AM. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B)(Misra, Seema) (Entered: 05/17/2004)
05/17/2004	<u>15</u>	REPLY MEMORANDUM OF LAW in Support re: <u>14</u> MOTION for Attachment In Aid Of Arbitration. MOTION for Preliminary Injunction. MOTION for Preliminary Injunction. MOTION for Temporary Restraining Order. MOTION for Temporary Restraining Order.. Document filed by Hartford Fire Insurance Company. (Misra, Seema) (Entered: 05/17/2004)
05/17/2004	<u>16</u>	AFFIDAVIT of Gary Uphouse in Opposition to <u>3</u> Order to Show Cause. Document filed by Charles Caronia Jr., Charles A. Caronia, Andrejs Krutainis, The Evergreen Organization, Inc., Gary Uphouse. (Kittredge, David) Modified on 8/13/2004 (mj,). (Entered: 05/17/2004)
05/18/2004	<u>17</u>	ORDER; that plaintiff's motion for a preliminary injunction and an order of attachment is granted to the extent and on the terms there indicated. Petitioner shall submit an order no later than 4 p.m. on 5/21/04. (Signed by Judge Lewis A. Kaplan on 5/18/04) (pl,) (Entered: 05/18/2004)
05/18/2004		MEMORANDUM TO THE DOCKET CLERK: Preliminary Injunction hearing begun and concluded on 05/18/04 (djc,) (Entered: 05/19/2004)
05/25/2004	<u>18</u>	TRANSCRIPT of proceedings held on 5/4/04 before Judge Lewis A. Kaplan.(dfe,) (Entered: 05/25/2004)
06/01/2004	<u>19</u>	TRANSCRIPT of proceedings held on May 18, 2004, 11:00 a.m. before Judge Lewis A. Kaplan.(dt,) (Entered: 06/01/2004)
06/01/2004	<u>20</u>	TRANSCRIPT of proceedings held on May 18, 2004, 11:00 a.m. before Judge Lewis A. Kaplan.(dt,) (Entered: 06/01/2004)
06/02/2004	<u>21</u>	MOTION for Attachment Aid Of Arbitration <i>Proposed Preliminary Injunction Order And Attachment Order.</i> , MOTION for Preliminary Injunction. Document filed by Hartford Fire Insurance Company. (Misra,

		Seema) (Entered: 06/02/2004)
06/08/2004	<u>22</u>	PRELIMINARY INJUNCTION ORDER AND ATTACHMENT ORDER IN AID OF ARBITRATION; granting in part and denying in part <u>21</u> Motion to Attach in order, granting in part and denying in part <u>21</u> Motion for Preliminary Injunction; plaintiffs motion is granted to the extend set forth in this attached order. The case is transferred to the suspense docket. . (Signed by Judge Lewis A. Kaplan on 6/8/04) (pl,) (Entered: 06/08/2004)
06/14/2004	<u>23</u>	Undertaking for preliminary injunction BOND # CGB 8755000 in the amount of \$ 10,000 posted by Hartford Fire Insurance Company. (jf,) Additional attachment(s) added on 6/15/2004 (kkc,). (Entered: 06/14/2004)
06/14/2004	<u>24</u>	Undertaking on attachment BOND # CGB 8761703 in the amount of \$ 1,000 posted by Hartford Fire Insurance Company. (jf,) Additional attachment(s) added on 6/15/2004 (kkc,). (Entered: 06/14/2004)
08/16/2004	<u>25</u>	NOTICE of Appearance by David Nyce Kittredge on behalf of Charles Caronia Jr., Charles A. Caronia, Andrejs Krutainis, The Evergreen Organization, Inc., Gary Uphouse (Kittredge, David) (Entered: 08/16/2004)
08/11/2005	<u>26</u>	MOTION to Compel Arbitration : <i>Petition To Compel Arbitration of Hartford Fire Insurance Company</i> . Document filed by Hartford Fire Insurance Company. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B) (Chaudhery, Kamilla) (Entered: 08/11/2005)
08/11/2005	<u>27</u>	DECLARATION of Vincent A. Vitiello II in Support re: <u>26</u> MOTION to Compel Arbitration : <i>Petition To Compel Arbitration of Hartford Fire Insurance Company</i> .. Document filed by Hartford Fire Insurance Company. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit B# <u>3</u> Exhibit C# <u>4</u> Exhibit D)(Chaudhery, Kamilla) (Entered: 08/11/2005)
08/11/2005	<u>28</u>	MEMORANDUM OF LAW in Support re: <u>26</u> MOTION to Compel Arbitration : <i>Petition To Compel Arbitration of Hartford Fire Insurance Company</i> .. Document filed by Hartford Fire Insurance Company. (Chaudhery, Kamilla) (Entered: 08/11/2005)
08/12/2005	<u>29</u>	AFFIDAVIT OF SERVICE of Petition to Compel Arbitration; Declaration Of Vincent A. Vitiello II In Support Of Hartford's Petition To Compel Arbitration, and Petitioner's Memorandum Of Law In Support Of Petition To Compel Arbitration served on Christopher T. Bradley, Esq. and Philip M. Gilligan, Esq. on August 12, 2005. Document filed by Hartford Fire Insurance Company. (Chaudhery, Kamilla) (Entered: 08/12/2005)
09/07/2005	<u>30</u>	ORDER; granting <u>26</u> Motion to Compel Arbitration. The Clerk shall close the case. (Signed by Judge Lewis A. Kaplan on 9/7/05) (sac,) (Entered: 09/08/2005)
09/07/2005		Transmission to Judgments and Orders Clerk. Transmitted re: <u>30</u> Order

		on Motion to Compel Arbitration, to the Judgments and Orders Clerk for preparation of Judgment. (sac,) (Entered: 09/08/2005)
09/08/2005	<u>31</u>	CLERK'S JUDGMENT That for the reasons stated in the Court's Order dated September 7, 2005, the petition to compel arbitration, which is not opposed, is granted; accordingly, the case is closed. (Signed by J. Michael McMahon, clerk on 9/8/05) (Attachments: # <u>1</u> Notice of Right Appeal)(ml,) (Entered: 09/08/2005)
09/20/2005	<u>32</u>	ENDORSED LETTER addressed to Judge Lewis A. Kaplan from Christopher T. Bradley dated 9/14/05 re: Absent agreement among the parties, any relief must be sought by motion. (Signed by Judge Lewis A. Kaplan on 9/15/05) (sac,) Modified on 9/21/2005 (sac,). (Entered: 09/21/2005)
10/05/2005	<u>33</u>	STIPULATION AND ORDER that the firm of Marshall, conway & Wright, P.C. is substituted in place and stead of Luboja & Thau LLP as attorneys for respondents The Evergreen Organization, Inc. (Signed by Judge Lewis A. Kaplan on 10/5/05) (dle,) (Entered: 10/06/2005)
10/05/2005	<u>34</u>	ORDER that the firm of Marshall Conway & Wright P.C. is substituted in place and stead of Luboja & Thau LLP as attorneys for respondent Andrejs Krutainis in this action and that this substitution be entered into effect without further notice. (Signed by Judge Lewis A. Kaplan on 9/14/05) (dle,) (Entered: 10/06/2005)
10/05/2005	<u>35</u>	ORDER that the firm of Marshall, Conway * Wright, P.C. be substituted in place and stead of Luboja & Thau LLP as attorneys for respondent, Chaarles Caronia Jr. in this action and that this substitution be entered into effect without further notice. (Signed by Judge Lewis A. Kaplan on 10/5/05) (dle,) (Entered: 10/06/2005)
10/05/2005	<u>36</u>	ORDER that the firm of Marshall, Conway & Wright, P.C. be substituted in place and stead of Luboja & Thau, LLP as attorneys for respondent Gary Uphouse. (Signed by Judge Lewis A. Kaplan on 10/5/05) (dle,) (Entered: 10/06/2005)
10/05/2005	<u>37</u>	ORDER that the firm of Marshall, Conway & Wright, P.C. be substituted in place and stead of Luboja & Thau, LLP as attorneys for respondent Charles Caronia in this action. (Signed by Judge Lewis A. Kaplan on 10/5/05) (dle,) (Entered: 10/06/2005)
10/07/2005	<u>38</u>	NOTICE OF APPEAL from <u>30</u> Order on Motion to Compel Arbitration. Document filed by Andrejs Krutainis, Charles A. Caronia, Gary Uphouse, Charles Caronia, Jr. Filing fee \$ 255.00, receipt number E557384. (nd,) (Entered: 10/07/2005)
10/07/2005		Transmission of Notice of Appeal to the District Judge re: <u>38</u> Notice of Appeal. (nd,) (Entered: 10/07/2005)
10/07/2005		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: <u>38</u> Notice of Appeal. (nd,) (Entered: 10/07/2005)

10/07/2005	39	Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files for <u>17</u> Order on Motion to Attach,, Order on Motion for Preliminary Injunction,, Order on Motion for TRO,, <u>5</u> Exhibit List filed by Hartford Fire Insurance Company,, <u>29</u> Affidavit of Service Other, filed by Hartford Fire Insurance Company,, <u>30</u> Order on Motion to Compel Arbitration, <u>31</u> Clerk's Judgment,, <u>6</u> Exhibit List filed by Hartford Fire Insurance Company,, <u>7</u> Exhibit List filed by Hartford Fire Insurance Company,, <u>8</u> Memorandum of Law, filed by Hartford Fire Insurance Company,, <u>9</u> Bond filed by Hartford Fire Insurance Company,, <u>21</u> MOTION for Attachment Aid Of Arbitration <i>Proposed Preliminary Injunction Order And Attachment Order</i> . MOTION for Preliminary Injunction. filed by Hartford Fire Insurance Company,, <u>32</u> Endorsed Letter,, <u>33</u> Stipulation and Order, <u>22</u> Order on Motion to Attach,, Order on Motion for Preliminary Injunction,, <u>34</u> Order,, <u>23</u> Bond filed by Hartford Fire Insurance Company,, <u>35</u> Order,, <u>36</u> Order, <u>10</u> Rule 7.1 Disclosure Statement filed by The Evergreen Organization, Inc.,, <u>11</u> Affirmation in Opposition, filed by The Evergreen Organization, Inc.,, Charles A. Caronia,, Gary Uphouse,, Charles Caronia, Jr., Andrejs Krutainis,, <u>12</u> Affirmation in Opposition, filed by The Evergreen Organization, Inc.,, Charles A. Caronia,, Gary Uphouse,, Charles Caronia, Jr., Andrejs Krutainis,, <u>13</u> Memorandum of Law in Oppisition filed by The Evergreen Organization, Inc.,, Charles A. Caronia,, Gary Uphouse,, Charles Caronia, Jr., Andrejs Krutainis,, <u>24</u> Bond filed by Hartford Fire Insurance Company,, <u>37</u> Order, <u>38</u> Notice of Appeal filed by Charles A. Caronia,, Gary Uphouse,, Charles Caronia, Jr., Andrejs Krutainis,, <u>1</u> Petition (Other) filed by Hartford Fire Insurance Company,, <u>2</u> Rule 7.1 Disclosure Statement filed by Hartford Fire Insurance Company,, <u>15</u> Reply Memorandum of Law in Support of Motion, filed by Hartford Fire Insurance Company,, <u>25</u> Notice of Appearance filed by The Evergreen Organization, Inc.,, Charles A. Caronia,, Gary Uphouse,, Charles Caronia, Jr., Andrejs Krutainis,, <u>16</u> Affidavit in Opposition filed by The Evergreen Organization, Inc.,, Charles A. Caronia,, Gary Uphouse,, Charles Caronia, Jr., Andrejs Krutainis,, <u>26</u> MOTION to Compel Arbitration : <i>Petition To Compel Arbitration of Hartford Fire Insurance Company</i> . filed by Hartford Fire Insurance Company,, <u>27</u> Declaration in Support of Motion, filed by Hartford Fire Insurance Company,, <u>28</u> Memorandum of Law in Support of Motion filed by Hartford Fire Insurance Company,, <u>3</u> Order to Show Cause,, Preliminary Injunction,, Temporary Restraining Order, filed by Hartford Fire Insurance Company, were transmitted to the U.S. Court of Appeals. (nd,) (Entered: 10/07/2005)
11/29/2005		USCA SCHEDULING ORDER as to <u>38</u> Notice of Appeal filed by Charles A. Caronia, Gary Uphouse, Charles Caronia, Jr., Andrejs Krutainis, USCA Case Number 05-5417-cv. Roseann B. MacKechnie, Clerk USCA. Certified: 11/22/05. Appeal Record due by 12/21/2005. Appellant Brief due by 12/28/2005. Appellee Brief due by 1/27/2006. (tp,) (Entered: 11/29/2005)
12/09/2005	40	NOTICE of Appearance by Michael S. Gollub on behalf of Andrejs Krutainis, The Evergreen Organization, Inc., Charles A. Caronia, Gary

		Uphouse, Charles Caronia, Jr (Gollub, Michael) (Entered: 12/09/2005)
12/09/2005	<u>41</u>	FIRST MOTION to Vacate <i>order granting petition to compel arbitration</i> . Document filed by Andrejs Krutainis, The Evergreen Organization, Inc., Charles A. Caronia, Gary Uphouse, Charles Caronia, Jr. (Gollub, Michael) (Entered: 12/09/2005)
12/09/2005	<u>42</u>	FILING ERROR - WRONG DOCUMENT TYPE SELECTED FROM MENU - FIRST MOTION to Vacate(Declaration in support of Motion) <i>order granting petition to compel arbitration</i> . Document filed by Andrejs Krutainis, The Evergreen Organization, Inc., Charles A. Caronia, Gary Uphouse, Charles Caronia, Jr. (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit # <u>3</u> Exhibit # <u>4</u> Exhibit # <u>5</u> Exhibit # <u>6</u> Exhibit # <u>7</u> Exhibit # <u>8</u> Exhibit # <u>9</u> Exhibit # <u>10</u> Exhibit # <u>11</u> Exhibit # <u>12</u> Exhibit # <u>13</u> Exhibit # <u>14</u> Exhibit) (Gollub, Michael) Modified on 12/29/2005 (kw,). (Entered: 12/09/2005)
12/09/2005	<u>43</u>	FILING ERROR - WRONG DOCUMENT TYPE SELECTED FROM MENU - FIRST MOTION to Vacate (Declaration in Support) <i>order granting petition to compel arbitration</i> . Document filed by Andrejs Krutainis, The Evergreen Organization, Inc., Charles A. Caronia, Gary Uphouse, Charles Caronia, Jr. (Attachments: # <u>1</u> Exhibit # <u>2</u> Exhibit # <u>3</u> Exhibit)(Gollub, Michael) Modified on 12/29/2005 (kw,). (Entered: 12/09/2005)
12/09/2005	<u>44</u>	FILING ERROR - WRONG DOCUMENT TYPE SELECTED FROM MENU - FIRST MOTION to Vacate (Declaration in Support) <i>order granting petition to compel arbitration</i> . Document filed by Andrejs Krutainis, The Evergreen Organization, Inc., Charles A. Caronia, Gary Uphouse, Charles Caronia, Jr. (Gollub, Michael) Modified on 12/29/2005 (kw,). (Entered: 12/09/2005)
12/09/2005	<u>45</u>	FILING ERROR - WRONG DOCUMENT TYPE SELECTED FROM MENU - FIRST MOTION to Vacate <i>Uphouse (Affidavit in Support)</i> . Document filed by Andrejs Krutainis, The Evergreen Organization, Inc., Charles A. Caronia, Gary Uphouse, Charles Caronia, Jr. (Gollub, Michael) Modified on 12/29/2005 (kw,). (Entered: 12/09/2005)
12/09/2005	<u>46</u>	FILING ERROR - WRONG DOCUMENT TYPE SELECTED FROM MENU - FIRST MOTION to Vacate (<i>memorandum of law in support</i>). Document filed by Andrejs Krutainis, The Evergreen Organization, Inc., Charles A. Caronia, Gary Uphouse, Charles Caronia, Jr. (Gollub, Michael) Modified on 12/29/2005 (kw,). (Entered: 12/09/2005)
12/27/2005	<u>47</u>	AFFIDAVIT of James E.Fitzgerald in Opposition re: <u>41</u> FIRST MOTION to Vacate <i>order granting petition to compel arbitration</i> ., <u>42</u> FIRST MOTION to Vacate <i>order granting petition to compel arbitration</i> ., <u>43</u> FIRST MOTION to Vacate <i>order granting petition to compel arbitration</i> ., <u>44</u> FIRST MOTION to Vacate <i>order granting petition to compel arbitration</i> ., <u>45</u> FIRST MOTION to Vacate <i>Uphouse Affidavit</i> .. Document filed by Hartford Fire Insurance Company. (Attachments: # <u>1</u> Exhibit 1# <u>2</u> Exhibit 2# <u>3</u> Exhibit 3# <u>4</u> Exhibit 4# <u>5</u> Exhibit 4A# <u>6</u> Exhibit 4B# <u>7</u> Exhibit 4C# <u>8</u> Exhibit 4D)(Szyfer, Claude)

		(Entered: 12/27/2005)
12/27/2005	<u>48</u>	MEMORANDUM OF LAW in Opposition re: <u>41</u> FIRST MOTION to Vacate <i>order granting petition to compel arbitration.</i> , <u>42</u> FIRST MOTION to Vacate <i>order granting petition to compel arbitration.</i> , <u>43</u> FIRST MOTION to Vacate <i>order granting petition to compel arbitration.</i> , <u>44</u> FIRST MOTION to Vacate <i>order granting petition to compel arbitration.</i> , <u>45</u> FIRST MOTION to Vacate <i>Uphouse Affidavit.</i> Document filed by Hartford Fire Insurance Company. (Szyfer, Claude) (Entered: 12/27/2005)
12/29/2005		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Michael Gollub to RE-FILE Document <u>42</u> FIRST MOTION to Vacate <i>order granting petition to compel arbitration.</i> Use the document type Declaration in Support of Motion found under the document list Responses and Replies. (kw,) (Entered: 12/29/2005)
12/29/2005		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Michael Gollub to RE-FILE Document <u>43</u> FIRST MOTION to Vacate <i>order granting petition to compel arbitration.</i> Use the document type Declaration in Support of Motion found under the document list Responses and Replies. (kw,) (Entered: 12/29/2005)
12/29/2005		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Michael Gollub to RE-FILE Document <u>44</u> FIRST MOTION to Vacate <i>order granting petition to compel arbitration.</i> Use the document type Declaration in Support of Motion found under the document list Responses and Replies. (kw,) (Entered: 12/29/2005)
12/29/2005		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Michael Gollub to RE-FILE Document <u>45</u> FIRST MOTION to Vacate <i>Uphouse Affidavit.</i> Use the document type Affidavit in Support of Motion found under the document list Responses and Replies. (kw,) (Entered: 12/29/2005)
12/29/2005		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - DOCUMENT TYPE ERROR. Note to Attorney Michael Gollub to RE-FILE Document <u>46</u> FIRST MOTION to Vacate <i>memorandum of law in support.</i> Use the document type Memorandum of Law in Support of Motion found under the document list Responses and Replies. (kw,) (Entered: 12/29/2005)
12/29/2005	<u>49</u>	AFFIDAVIT of Gary Uphouse in Support re: <u>45</u> FIRST MOTION to Vacate <i>Uphouse Affidavit.</i> Document filed by Andrejs Krutainis, The Evergreen Organization, Inc., Charles A. Caronia, Gary Uphouse, Charles Caronia, Jr. (Gollub, Michael) (Entered: 12/29/2005)
12/29/2005	<u>50</u>	FIRST MEMORANDUM OF LAW in Support re: <u>46</u> FIRST MOTION to Vacate <i>memorandum of law in support. motion to vacate.</i> Document filed by Andrejs Krutainis, The Evergreen Organization, Inc., Charles A. Caronia, Gary Uphouse, Charles Caronia, Jr. (Gollub, Michael) (Entered: 12/29/2005)

		12/29/2005)
12/29/2005	<u>51</u>	DECLARATION of Christopher Bradley in Support re: <u>44</u> FIRST MOTION to Vacate <i>order granting petition to compel arbitration..</i> Document filed by Andrejs Krutainis, The Evergreen Organization, Inc., Charles A. Caronia, Gary Uphouse, Charles Caronia, Jr. (Gollub, Michael) (Entered: 12/29/2005)
12/29/2005	<u>52</u>	DECLARATION in Support re: <u>41</u> FIRST MOTION to Vacate <i>order granting petition to compel arbitration..</i> Document filed by Andrejs Krutainis, The Evergreen Organization, Inc., Charles A. Caronia, Gary Uphouse, Charles Caronia, Jr. (Gollub, Michael) (Entered: 12/29/2005)
12/29/2005	<u>53</u>	DECLARATION of Michael Gollub in Support re: <u>43</u> FIRST MOTION to Vacate <i>order granting petition to compel arbitration..</i> Document filed by Andrejs Krutainis, The Evergreen Organization, Inc., Charles A. Caronia, Gary Uphouse, Charles Caronia, Jr. (Gollub, Michael) (Entered: 12/29/2005)
01/05/2006	<u>54</u>	FIRST REPLY MEMORANDUM OF LAW in Support re: <u>41</u> FIRST MOTION to Vacate <i>order granting petition to compel arbitration. reply memo of law in support/tablecont/auth.</i> Document filed by Andrejs Krutainis, The Evergreen Organization, Inc., Charles A. Caronia, Gary Uphouse, Charles Caronia, Jr. (Attachments: # <u>1</u>)(Gollub, Michael) (Entered: 01/05/2006)
01/13/2006	<u>56</u>	ORDER of USCA (Certified Copy) as to <u>38</u> Notice of Appeal filed by Charles A. Caronia,, Gary Uphouse,, Charles Caronia, Jr., Andrejs Krutainis, USCA Case Number 05-5417-cv. Roseann B. MacKechnie, Clerk USCA. Certified: 1/12/2006. (nd,) (Entered: 01/25/2006)
01/17/2006	<u>55</u>	MEMORANDUM OPINION re: denied in all respects, <u>41</u> FIRST MOTION to Vacate <i>order granting petition to compel arbitration.</i> filed by The Evergreen Organization, Inc.,, Charles A. Caronia,, Gary Uphouse,, Charles Caronia, Jr., Andrejs Krutainis. (Signed by Judge Lewis A. Kaplan on 1/17/06) (sac,) (Entered: 01/18/2006)
03/10/2006	<u>57</u>	MANDATE of USCA STIPULATION WITHDRAWING APPEAL (Certified Copy) as to <u>38</u> Notice of Appeal filed by Charles A. Caronia,, Gary Uphouse,, Charles Caronia, Jr., Andrejs Krutainis, USCA Case Number 05-5417-cv....that the appeal is hereby WITHDRAWN pursuant to Rule 42(b) of the Federal Rules of Appellate Procedure. Roseann B. MacKechnie, Clerk USCA. Certified: 3/7/2006. (nd,) (Entered: 03/13/2006)
08/22/2007	<u>58</u>	NOTICE of Petition. Document filed by Hartford Fire Insurance Company. (Misra, Seema) (Entered: 08/22/2007)
08/22/2007	<u>59</u>	MOTION for an order purs. to 9 USC 9 granting entry of judgment of the Final Arbitration Award by the Arbitration Panel in the arbitration captioned Hartford Fire Insurance Company v. The Evergreen Organization, Inc., et al. Document filed by Hartford Fire Insurance Company.(dle) (Entered: 08/27/2007)

08/22/2007	60	MEMORANDUM OF LAW in Support re: [59] MOTION for Judgment confirming arbitration award. Document filed by Hartford Fire Insurance Company. (dle) (Entered: 08/27/2007)
09/07/2007	61	ORDER this proceeding was closed years ago. The petition and motion are denied without prejudice to the commencement of a new proceeding to confirm the arbitration award. SO ORDERED. (Signed by Judge Lewis A. Kaplan on 9/6/2007) (jmi) (Entered: 09/07/2007)

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PACER Login:	ss0002	Client Code:	743857-0902
Description:	Docket Report	Search Criteria:	1:04-cv-03333-LAK
Billable Pages:	7	Cost:	0.56

Exh. 2

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

----- x
In the Matter of the Application of)

HARTFORD FIRE INSURANCE COMPANY,)

Petitioner,)

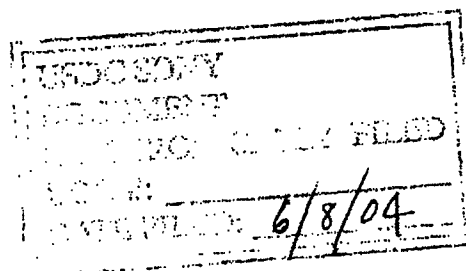
-against-)

THE EVERGREEN ORGANIZATION, INC.)
CHARLES A. CARONIA, GARY UPHOUSE,)
CHARLES CARONIA, JR., and ANDREJS)
KRUTAINIS,)

Respondents.)
----- x

**PRELIMINARY INJUNCTION
ORDER AND ATTACHMENT
ORDER IN AID OF
ARBITRATION**

04 CV 3333 (LAK)



This matter has come before the Court on the motion (the "Motion") of Petitioner Hartford Fire Insurance Company ("Hartford") for a preliminary injunction order and attachment order in aid of an arbitration pending in New York, New York (the "Arbitration"). The Court has considered and reviewed Hartford's Verified Petition and all affidavits with their annexed exhibits submitted in support of the Motion (including the Declaration of Vincent A. Vitiello II dated ^{May 3} April 30, 2004, the Declaration of Josh Caulder dated April 30, 2004, and the Declaration of James E. Fitzgerald dated May 3, 2004) and the Memorandum Of Law In Support Of Hartford Fire Insurance Company's Motion For A Temporary Restraining Order, Preliminary Injunction, and Attachment Order in Aid of Arbitration dated April 30, 2004. The Court has also considered and reviewed the Affirmation of David N. Kittredge dated May 14, 2004, the Affirmation of

Gary Uphouse and the Memorandum of Law in Opposition to Petitioners' Motion for a Temporary Restraining Order, Preliminary Injunction, and Attachment Order in Aid of Arbitration dated May 14, 2004 filed by Respondents The Evergreen Organization ("Evergreen"), Charles A. Caronia, Gary Uphouse, Charles Caronia, Jr., and Andrejs Krutainis' (collectively, "Respondents"). The Court has further reviewed and considered the Reply Memorandum Of Law In Support Of Motion For A Temporary Injunction, Preliminary Injunction, And Attachment Order In Aid Of Arbitration, and the Declaration of S.V. Stuart M. Johnson dated May 16, 2004 submitted by Hartford.

W The Court ~~conducted a hearing and~~ entertained oral argument by counsel for all parties on May 18, 2004.

After due deliberation, the Court has made and filed its findings of fact and conclusions on the record
of law in this matter, Therefore, IT IS ORDERED:

- (1) That Evergreen establish a fiduciary account naming Hartford as the exclusive beneficiary, in which all amounts previously collected, or to be collected, for policies issued on behalf of Hartford are to be deposited, without offset of any kind;
- W* (2) That Respondents, and anyone acting on their behalf, shall not ~~dissipate~~ *transfer, assign or encumber* any assets of Evergreen prior to the entry of an award in the Arbitration;
- (3) That Respondents identify to Hartford all assets, including bank and deposit accounts, held in Evergreen's name or otherwise in its possession, custody, or control;

- (4) That, conditional on the posting by Hartford of an undertaking in the amount of \$1,000, all bank and deposit accounts or other assets held in Evergreen's name or otherwise in its possession, custody, or control, be attached up to the amount of \$700,000 to prevent further dwindling or encumbering of assets held in said accounts prior to an award in Arbitration;
- (5) That Respondents, including Evergreen's officers, directors, agents, and affiliates provide Hartford and/or its duly authorized representatives with access to and copies of any and all records, books, bank account records (whether stored on paper or other media such as computer files or electronic mail) relating in any way to policies issued on behalf of Hartford;
- (6) That Respondents, including Evergreen's officers, directors, agents, and affiliates preserve any and all records, books, or bank account records (whether stored on paper or other media such as computer files or electronic mail) relating in any way to policies issued on behalf of Hartford, including but not limited to all files and records reflecting agreements and dealings between Evergreen and producers and sub-producers of GAP Business; and

- (7) That security in the amount of \$10,000 be posted by Hartford within 7 business days of the entry of this Order.

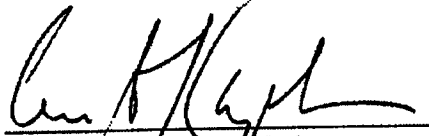
This Order shall remain in full force and effect until the final award issued in the Arbitration or until further order of the Court, whichever occurs first.

IT IS FURTHER ORDERED, that plaintiff's motion is granted to the extent set forth above. The case is transferred to the suspense docket.

Date: May 8, 2004

June 8

BY THE COURT:


United States District Judge

Exh. 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
HARTFORD INSURANCE COMPANY,

Petitioner,

-against-

04 Civ. 3333 (LAK)

THE EVERGREEN ORGANIZATION, INC., et al.,

Respondents.
----- x

ORDER

LEWIS A. KAPLAN, *District Judge*.

This proceeding was instituted in 2004 in order to obtain equitable relief pending arbitration. Petitioner then moved to compel arbitration, an application that was granted and the case closed. DI 31. An appeal from that order was withdrawn in 2006. DI 57.

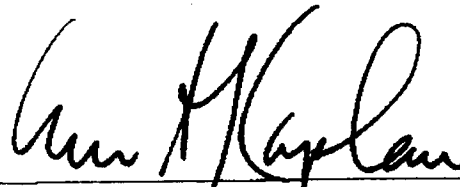
In the meantime, respondents moved to vacate the order compelling arbitration, but that motion was denied long ago. DI 55.

On August 22, 2007, petitioner filed in this action a notice of petition to confirm an arbitration award. DI 57. It moved also to confirm the award.

This proceeding was closed years ago. The petition and the motion are denied without prejudice to the commencement of a new proceeding to confirm the arbitration award.

SO ORDERED.

Dated: September 6, 2007



Lewis A. Kaplan
United States District Judge

